



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

1-23-76 8-12-77 1-19-78

[ ] [ ]

JOHN X. ZAKA  
JOHN S. RICHMOND, JR.  
200 FRANKLIN STREET  
BOSTON MA 02111-2804

EXAMINER
----------

ART UNIT	PAPER NUMBER
----------	--------------

DATE MAILED:

15  
JAN 1978

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/447,023

Applicant(s)

BERRY ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-65, 70 and 85-106 is/are pending in the application.
- 4a) Of the above claim(s) 1-65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 70, 85-106 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

**Nonelected claims**

**Claims 1-65 are to a non-elected invention and have not yet been cancelled.**

**The continuing data, should be filled in on line 2, page 1.**

**Finality withdrawn**

The finality of the last office action has been withdrawn in favor of this new office action.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 70, 85-106 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiriboga et al. (Journal of Food Science, p. 464-467).

Chiriboga et al. disclose a cranberry food product that contains a juice component from cranberries with an anthocyanin content of about 10 mg/100 ml or less (col. 1, 1<sup>st</sup> para. and Table 1, which shows initial anthocyanin contents below 10 mg and page 465 2<sup>nd</sup> col. for blended juices such as dark juice light juice) . Claims 70 and 85 differs from the reference in the ~~in the~~ use of other juice components. However, a cocktail mixture is known to contain other juice components (red pigment), water, sweeteners and acids. Therefore, it would have been obvious to make a blended juice as disclosed by the reference.

Art Unit: 1761

Claim 86 further requires an anthocyanin content of 3.5 mg/100 ml or less. However, as various levels of anthocyanin are known in light color berries, it would have been obvious to use even lighter colored berries for their known function of not containing color.

The reference discloses the use of the cranberry juice cocktail as the sole juice component as in claim 87 (entire reference). Therefore, it would have been obvious to use such a juice.


Claim 88 requires that the juice component is a particular amount of the blended juice. Chiriboga et al. disclose using various amounts including 30% light juice and within 10 mg/100 ml as in claim 89 (page 465, 2<sup>nd</sup> col.). Therefore, it would have been obvious to use known amount of juice component and anthocyanin content to make a juice.

Claim 90 further requires a particular light absorbance. It is not seen at this time that the cited juices do not show the claimed light absorbance. Therefore, it would have been obvious to make a juice with the cited light absorbance.

Claims 91-96 further require adding known components to juice and nothing new is seen in this. Therefore, it would have been obvious to add known juice component to make a juice. The limitations of claims 97-100 have been discussed above and are obvious for those reasons.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 10-24-01

  
HELEN PRATT  
PRIMARY EXAMINER